



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2018-0114; FRL-9977-50-OAR]

Removal of the Federal Reformulated Gasoline Program from the Northern Kentucky Portion of the Cincinnati-Hamilton Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of final action on petition.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action in announcing its approval of the petition by Kentucky to opt-out of the federal reformulated gasoline (RFG) program and remove the requirement to sell federal RFG for Boone, Campbell, and Kenton counties (the Northern Kentucky Area), which are part of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana maintenance area for the 2008 ozone national ambient air quality standard (NAAQS) (Cincinnati-Hamilton, OH-KY-IN Area). EPA has determined that this removal of the federal RFG program for the Northern Kentucky Area is consistent with the applicable provisions of the Clean Air Act (CAA) and EPA's regulations.

DATES: The effective date for removal of the Northern Kentucky Area from the federal RFG program is July 1, 2018.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Office of Transportation

and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: (202) 343-9256; e-mail address: dickinson.david@epa.gov or Rudy Kapichak, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, (2000 Traverwood, Ann Arbor, MI 48105); telephone number: 734-214-4574; email address: kapichak.rudolph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

Entities potentially affected by this final action are fuel producers and distributors who do business in the Northern Kentucky Area.

Examples of Potentially Regulated Entities	NAICS ¹ Codes
Petroleum refineries	324110
	424710
Gasoline Marketers and Distributors	424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220
	484230

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which EPA is aware that potentially could be affected by this final action. Other types of entities not listed on the table could also be affected by this final action. To determine whether your organization could be affected by this final action, you should carefully examine the regulations in 40 CFR part 80, subpart D – Reformulated Gasoline. If you have questions regarding the

¹ North American Industry Classification System.

applicability of this action to a particular entity, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. How Can I Get Copies of This Document and Other Related Information?

EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2018-0114. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through www.regulations.gov.

II. Background

A. What is the RFG Program?

The 1990 Clean Air Act (CAA) amendments established specific requirements for the RFG program to reduce ozone levels in certain areas in the country experiencing ground-level ozone or smog problems by reducing vehicle emissions of compounds that form ozone, specifically volatile organic compounds (VOCs). The 1990 CAA amendments, specifically CAA section 211(k)(5), directed EPA to issue regulations that specify how gasoline can be “reformulated” so as to result in significant reductions in vehicle emissions of ozone-forming and toxic air pollutants relative to the 1990 baseline fuel, and to require the use of such reformulated gasoline in certain “covered areas.” The CAA defined certain nonattainment areas as “covered areas” which are required to use reformulated gasoline (RFG) and provided other

areas with an ability to “opt-in” to the RFG program. CAA section 211(k)(6) provides an opportunity for an area classified as a Marginal, Moderate, Serious, or Severe ozone nonattainment area, or which is in the ozone transport region established by CAA section 184(a), to “opt-in” to the RFG program upon application by the governor of the state (or his authorized representative) and subsequent action by EPA.

As in other RFG covered areas, RFG opt-in areas are subject to the prohibition in CAA section 211(k)(5) on the sale or dispensing by any person of conventional (non-RFG) gasoline to ultimate consumers in the covered area. The prohibition also includes the sale or dispensing by any refiner, blender, importer, or marketer of conventional gasoline for resale in any covered areas, without segregating the conventional gasoline from RFG and clearly marking conventional gasoline as not for sale to ultimate consumers in a covered area. EPA first published regulations for the RFG program on February 16, 1994 (59 FR 7716).

Kentucky voluntarily opted Boone, Campbell, and Kenton Counties into the RFG program in 1995. Kentucky also opted its portion of the Louisville ozone area (Jefferson County and parts of Bullitt and Oldham Counties) into the RFG program; however, today’s action does not affect the use of RFG in the Louisville ozone area. A current listing of the RFG covered areas and a summary of RFG requirements can be found on EPA's website at: <https://www.epa.gov/gasoline-standards/reformulated-gasoline>.

B. Opt-Out Procedures

The RFG regulations (40 CFR 80.72—Procedures for opting out of the covered areas) provide the process and criteria for a reasonable transition out of the RFG program if a state decides to opt-out.² These opt-out regulations provide that the governor of the state must submit a petition to the Administrator requesting to opt-out of the RFG program. The petition must include specific information on how, if at all, the state has relied on RFG in a proposed or approved state implementation plan (SIP) or plan revision and, if RFG is relied upon, how the SIP will be revised to reflect the state’s opt-out from RFG. The opt-out regulations also provide that EPA will notify the state in writing of the Agency’s action on the petition and the date the opt-out becomes effective (i.e., the date RFG is no longer required in the affected area) when the petition is approved. The opt-out regulations also provide that EPA will publish a **Federal Register** notice announcing the approval of any opt-out petition and the effective date of such opt-out. If a SIP revision is required, the effective date of EPA’s approval of the opt-out can be no less than 90 days from the effective date of EPA’s approval of the revision to the SIP that removes RFG as a control measure. *See* 40 CFR 80.72(c)(7).

EPA determined in the RFG “Opt-out Rule” that it would not be necessary to conduct a separate rulemaking for each future opt-out request. (*See* 61 FR 35673 at 35675 (July 8, 1996)). EPA established a petition process to address, on a case-by-case basis, future individual state requests to opt-out of the RFG program. The opt-out regulations establish clear and objective criteria for EPA to apply. These regulatory criteria address when a state’s petition is complete and the appropriate transition time for opting out. As EPA stated in the preamble to the Opt-out

² Pursuant to authority under CAA sections 211(c) and (k) and 301(a), EPA promulgated regulations at 40 CFR 80.72 to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673) (the RFG “Opt-out Rule”); and were revised on October 20, 1997 (62 FR 54552).

Rule, this application of regulatory criteria on a case-by-case basis to individual opt-out requests does not require notice-and-comment rulemaking, either under CAA section 307(d) or the Administrative Procedure Act. Thus, in this action, EPA is applying the criteria and following the procedures specified in its opt-out regulations to approve Kentucky's petition.

C. Opt-out of RFG for the Northern Kentucky Portion of the Cincinnati-Hamilton OH-KY-IN Maintenance Area

On April 18, 2017, Kentucky submitted a petition to the EPA Administrator requesting to opt-out from the RFG program for Boone, Campbell and Kenton counties (the Northern Kentucky Area).³ In order to fulfill the requirements of the RFG opt-out regulations, on September 13, 2018, Kentucky submitted a revision to its maintenance plan for the Northern Kentucky Area to remove the emissions reductions associated with the use of RFG in this area and to demonstrate that the RFG opt-out would not interfere with the area's ability to attain or maintain the 2008 ozone NAAQS and any other NAAQS as required by CAA section 110(l). (*See* 40 CFR 80.72(b)). EPA published a proposed approval of the SIP revision on February 14, 2018 (83 FR 6496) and a final approval of the SIP revision on April 2, 2018 (83 FR 13872). The final approval of the maintenance plan revision was effective upon publication, April 2, 2018. The RFG opt-out regulations provide that the opt-out effective date shall be no less than 90 days from the EPA SIP approval effective date. (*See* 40 CFR 80.72(c)(7)). EPA is unaware of any reason that the effective date should be postponed, and therefore, is establishing an opt-out effective date of July 1, 2018 for the Northern Kentucky Area.

³ The Secretary of Kentucky's Energy and Environment Cabinet submitted the opt-out petition on behalf of the Commonwealth of Kentucky. A copy of the opt-out petition is included in the docket.

As provided by the RFG Opt-out Rule and the opt-out regulations, EPA will publish a final rule at a later date to remove the three counties in the Northern Kentucky Area from the list of RFG covered areas in 40 CFR 80.70 after the effective date of the opt-out. EPA believes that it is prudent to complete this ministerial exercise to revise the list of covered areas in the Code of Federal Regulations after the effective date of the opt-out.

III. Action

EPA is approving Kentucky's petition because it contained the information required by 40 CFR 80.72, including that Kentucky revised the approved maintenance plan for the 2008 ozone NAAQS for the Northern Kentucky Area to remove the emissions reductions associated with RFG. EPA is also determining the opt-out effective date by applying the criteria in 40 CFR 80.72(c)(7). As discussed in Section II.A. of this document, the opt-out regulations require that if a state included RFG as a control measure in an approved SIP, the state must revise the SIP, reflecting the removal of RFG as a control measure before an opt-out can be effective and the opt-out cannot be effective less than 90 days after the effective date of the approval of the SIP revision. EPA published a final approval of Kentucky's maintenance plan revision and noninterference demonstration on April 2, 2018 (83 FR 13872). The final approval was effective upon publication.

In summary, EPA is today notifying the public that it has applied its regulatory criteria to approve the petition by Kentucky to opt-out of the RFG program for the Northern Kentucky Area of the Cincinnati-Hamilton, OH-KY-IN ozone maintenance area and is thereby removing the prohibition on the sale of conventional gasoline in that area as of July 1, 2018. (*See* 40 CFR 80.72). This opt-out effective date applies to retailers, wholesale purchasers, consumers, refiners, importers, and distributors.

Dated: May 9, 2018.

E. Scott Pruitt,
Administrator.

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